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Mealey's Litigation Report: Insurance

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SECTION: Volume 24, Issue #12

HEADLINE: Carrier Owes No Coverage For Legionnaire's Disease Claims, Federal Judge Says

DATELINE: SPRINGFIELD, Ill. -

BODY:

Both a general liability policy and an umbrella policy exclude coverage for bacteria-related liability, an Illinois federal judge found Jan. 21, granting an insurer's motion for summary judgment seeking a declaration that it had no duty to defend its insured hotel owners and operators against underlying claims that guests contracted Legionnaire's disease from the hotel (*AMCO Insurance Co. v. Swagat Group LLC, d/b/a Comfort Inn of Lincoln, et al.*, No. 07-3330, C.D. Ill., Springfield Div.; *2010 U.S. Dist. LEXIS 4770*; See 2/19/09, Page 4).

(Opinion available 03-100127-001Z)

Marjorie Braucher and Bonnie E. Leiser alleged that the swimming pool and hot tub at the Comfort Inn of Lincoln, Ill., d/b/a the Best Western of Lincoln, Ill., were infested with Legionella bacteria.

Braucher asserted that a member of her family, Georgia Braucher, contracted Legionnaire's disease at the hotel and died as a result. Leiser contended that she contracted Legionnaire's disease and sustained permanent injuries and damages as a result.

Braucher and Leiser sued hotel owners and operators Swagat Group LLC, Choice Hotels International and Vasant Patel, as well as various employees and agents of the hotel.

Bacteria Exclusion

Swagat had general liability and umbrella policies with AMCO Insurance Co. The insurer filed a complaint for declaratory judgment in the U.S. District Court for the Central District of Illinois, alleging that it had no duty to defend the underlying lawsuits because its policies contained exclusions for bacteria-related liability. AMCO moved for judgment on the pleadings.

In a Feb. 9 opinion, Judge Jeanne E. Scott ruled that AMCO is entitled to judgment on the pleadings against Choice Hotels and Patel, finding that no material allegation of fact is in dispute between the parties.

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Judge Scott, however, denied AMCO judgment on the pleadings against Swagat, Braucher and Leiser.

"Swagat, Marjorie Braucher, and Bonnie Leiser have not conceded that the Swagat policies contain the bacteria exclusions, or any other applicable exclusions, however. In fact, Swagat specifically alleges that the only exclusions in its policies related to terrorism. A material allegation of fact remains in dispute between these parties," the judge said.

Amended Complaint

AMCO then filed an amended complaint containing certified copies of the Swagat policies as exhibits. Swagat, Braucher and Leiser admitted that the certified copies were true and accurate copies of the policies and that the policies contain the fungi or bacteria exclusions.

AMCO filed a motion for summary judgment, seeking judgment in its favor against Swagat, Braucher and Leiser. The defendants opposed the motion.

Judge Scott granted AMCO's motion, determining that the undisputed facts show that the policies exclude coverage for the underlying suits.

Equitable Estoppel

The judge rejected Swagat's argument that equitable estoppel precludes summary judgment and that it is entitled to reformation of the policies. The judge explained that the fungi or bacteria exclusions are unambiguous and clear.

"In light of these principles, it is clear that Swagat Group is not entitled to equitable relief. A party claiming equitable estoppel must demonstrate, among other elements, that the other party misrepresented or concealed material facts. The terms of the Swagat Policies are clear and unambiguous, negating this element. The Court also notes that, after the May 4, 2006, letter expressly brought the fungi/bacteria exclusion to Swagat Group's attention, Swagat continued to purchase policies from AMCO with the same coverage and exclusions," the judge said.

The judge also rejected Braucher and Leiser's argument that the reasonable expectations doctrine should apply to negate the exclusions. The judge explained that the reasonable expectations doctrine may be used as a tool when a contract is ambiguous. In this case, the judge said, the terms of the policies are not ambiguous.

"Braucher and Leiser's argument that the Court should interpret the Swagat Policies for their historical purpose, negating the fungi/bacteria exclusion, is similarly unavailing. Braucher and Leiser rely on cases analyzing pollution exclusions and refusing to extend the scope of these exclusions to injuries resulting from everyday activities gone awry, including peeling paint and insulation installation and removal. However, unlike the broad term 'pollution,' 'bacterium/bacteria' is a scientific classification. Here, there is no question that Legionella bacteria are, indeed, bacteria," the judge concluded.

David M. Heilmann and Steven N. Novosad of Clausen Miller in Chicago represent AMCO. Phillip A. Montalvo of Gehlbach Law Office in Lincoln represents Swagat Group and Patel. Andrew M. Ramage of Hinshaw & Culbertson in Springfield represents Choice Hotels. Thomas M. Lake and Patrick E. Halliday of Dudley & Lake in Libertyville, Ill., represent Braucher and Leiser.

(Additional Documents Available: Motion for summary judgment 03-100127-006B

Response to motion for summary judgment 03-100127-007B

Reply to response 03-100127-008B)

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